

Court of Appeal Clarifies Employers' Expense Reimbursement Obligations for Pandemic-Related Remote Work

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California Labor Code section 2802 (“Section 2802”) requires employers to reimburse employees for “all necessary expenditures or losses” they incur as a “direct consequence of the discharge of ... [their] duties, or ... [their] obedience to the directions of the employer.” So, in March 2020, when Governor Newsom issued a broad stay-at-home order requiring all non-essential workers to work remotely (if possible), questions arose about who should pay for any expenses related to this government-required remote work. And, on July 11, 2023, in [Thai v. International Business Machines Corporation, California Court of Appeal Case No. A165390](#), the California Court of Appeal for the First Appellate District answered this question. In its published opinion, the Court held that employers are responsible for reimbursing employees’ necessarily-incurred remote work expenses, *even when the only reason they are working from home is a government order*

The plaintiff, Paul Thai (“Thai”), sued IBM on behalf of himself and similarly situated employees, alleging IBM failed to reimburse employees for expenses incurred to perform their regular job duties from home pursuant to Governor Newsom’s stay-at-home order. Thai argued that, to accomplish his job duties from home, he required internet access, telephone service, a telephone headset, and a computer and accessories, all of which were items IBM provided to its employees in its offices. IBM argued that the Governor’s order was an intervening cause of the work-from-home expenses, foreclosing the allegation that IBM was the direct cause of the expenses and absolving IBM of liability under Section 2802. The trial court sustained IBM’s demurrer, concluding the stay-at-home order was an “intervening cause precluding direct causation by IBM,” and entered judgment in IBM’s favor.

On appeal, however, a three-justice panel unanimously reversed the trial court's ruling. The Court explained that, per the plain language of Section 2802(a), an employer's obligation to reimburse work expenses "does not turn on whether the employer's order was the proximate cause of the expenses." Rather, "it turns on whether the expenses were actually due to performance of the employee's duties." Thus, whether employees incurred business expenses while working at home following the government's stay-at-home order did not change an employer's reimbursement obligation under Section 2802.

Thai is a reminder that Section 2802 requires employers to reimburse an employee for all necessary expenses that are a direct consequence of the employee's job duties, regardless of whether the expenses were directly caused by the employer. Although government-imposed stay-at-home orders are, hopefully, a thing of the past, *Thai* has potential implications beyond the COVID-19 pandemic (or future pandemics). And, while the California Supreme Court ultimately may need to clarify the law with respect to employers' reimbursement obligations under Section 2802, until that happens, employers should consult with skilled employment counsel about their reimbursement obligations.

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